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Human rights defenders

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the members of the General Assembly the report submitted by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, in accordance with General Assembly resolution 58/178.

* This report is delayed in submission to reflect updated information.

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Summary

Human rights defenders fulfil a fundamental role in the protection and realization of human rights and in attaining the goals of the United Nations, whether in the context of poverty alleviation, humanitarian assistance, development or other domains. From this perspective, the Special Representative expresses deep concern at the continuing high level of violations committed against defenders around the world and hopes that States will take stronger action, including with the support of United Nations bodies, in implementing the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

The objective of the report is to look beyond specific violations and identify the absence of safeguards or the failure of institutions and agencies of the State that "allow" violations to occur in the first place. By identifying these weaknesses and formulating recommendations, the report urges States to meet their commitment to human rights defenders, as reflected in successive General Assembly resolutions, and to strengthen implementation of the Declaration.

The report presents examples of the most common violations recorded against human rights defenders. These include arbitrary arrest and detention, prosecution and pre-trial detention, violations of physical integrity and harassment. The factors that allow the violations to occur include weaknesses in the law and legal processes, limitations on the competence and independence of the judiciary, the lack of awareness or accountability among local authorities for the respect of international human rights standards, and weaknesses in civil society.

The report lists the groups of actors most commonly responsible for violations of defenders' rights. It suggests actions that can be taken to overcome the systemic weaknesses leading to the violations, including a much wider dissemination and use of the Declaration, strengthened training on the Declaration for the judiciary, suitable legislative reform, wider citizen participation, greater oversight by parliamentary bodies and better interministerial coordination.

The report focuses special attention on the freedom of association because of the multiple ways in which this right is restricted and its centrality to the effective work of defenders. The report describes the increasing adoption by States of "NGO laws" to regulate the work of non-governmental organizations — legislation which, in many instances, has been used to restrict human rights activities in violation of the Declaration. The report examines the different obstacles that human rights defenders, whether working within national or international organizations, face in the exercise of their freedom of association including: the criminalization of non-registered human rights groups; unnecessarily burdensome and lengthy registration procedures; limits on the creation of networks; inappropriate denial of registration; limited independence of registration authorities; requirements to re-register when new legislation is introduced; State scrutiny of and interference with an organization's management, objectives and activities; administrative and judicial harassment; restrictions on access to funding; restrictions on cooperation with international human rights partners.

The report concludes with examples of good practices and recommendations that would address the concerns identified.

Report of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani

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I. Introduction

1. Human rights defenders are fundamental actors in any effort to implement the overall international human rights framework. Their work is essential to the achievement of all the core objectives of the United Nations and its Member States at their national level. Establishing and sustaining democracy, maintaining international peace and security and advancing the agenda for development, as prioritized in the Millennium Development Goals, cannot be accomplished without the contributions that human rights defenders make in their varied fields of activity. Defenders bring to the fore information on the realities of situations to be addressed without which national and international efforts would be ineffective. They contribute to poverty alleviation, humanitarian assistance, post-conflict reconstruction, and to improving individual indicators of development such as access to health care and adult literacy, among many other activities.

2. In recognition of this critical role and the difficulties that defenders face in fulfilling it, the General Assembly, by resolution 53/144 of 8 March 1999, adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, known as the Declaration on human rights defenders, whose provisions provide a firm basis in international human rights law for the support and protection of human rights defenders. Subsequent resolutions (see in particular resolution 58/178 of 22 December 2003) call for action by States and United Nations bodies to support the Declaration's implementation.

3. Some States have taken action to implement the Declaration and to support and protect human rights defenders in their work. Some action has been also been taken regionally: the Inter-American Commission on Human Rights now has a well-established human rights defenders unit; the African Commission on Human and Peoples' Rights has this year established the mandate of Special Rapporteur on human rights defenders; and the European Union, also this year, adopted guidelines on human rights defenders. In 2003, the Fifth International Conference on New and Restored Democracies (Ulaanbataar, 18-20 June 2003) made a strong reference to the Declaration on human rights defenders in the Conference's own concluding declaration. There has been some effort made within the United Nations system to support the Declaration and the mandate of the Special Representative on human rights defenders. Human rights civil society is increasingly aware of the Declaration and the rights it enshrines.

4. However, in spite of these signs of progress, the Special Representative continues to register the most serious violations of the Declaration, which appear only to have increased in the six years since the instrument was adopted by the General Assembly. The reality that defenders confront in many countries of the world is that their protection, through laws, policies and practices and the creation of effective mechanisms, has yet to be achieved. In addition, the oppression of defenders is typically an indicator of a much wider lack of respect for human rights within a State and is directly proportional to this wider situation.

5. In this report, the Special Representative looks beyond specific violations to examine why they are able to occur, highlighting the absence of safeguards or the failure of institutions and agencies of the State to create a secure environment for

the defence of human rights. A separate section focuses on the freedom of association because of the multiple ways in which this right is restricted.

II. Applying the Declaration

6. Patterns of violations, as reflected in the information received by the Special Representative, make it possible to identify key factors that threaten the security of defenders and undermine their work. It is impossible to effectively implement the Declaration without giving due consideration to these factors and adopting concrete measures to overcome their adverse impact on human rights activities.

A. The context of responsibility

7. There are several levels of responsibility in applying the Declaration. The active presence of human rights defenders is essential to development and international peace and security, and in situations where respect for civil, cultural, economic, political and social rights are limited there is a particular need for a strong contribution from defenders. However, in the same situations where defenders are needed most, they are hindered in their efforts as a result of the limitations imposed upon them by a restrictive environment that fails to respect human rights. Initiatives to support development and peace and security must, therefore, recognize both the essential role of defenders and their simultaneous need for support. International initiatives, including those involving multilateral institutions, foreign policy, or security and development cooperation among States, must be sensitive to the need and the responsibility to incorporate, within the initiatives themselves, support for the implementation of the Declaration.

8. The responsibility to "create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice" (article 1 of the Declaration; see also paragraph 7 of the Preamble) rests primarily with the State. This responsibility includes the elimination of impunity. While acts and omissions of the State remain the primary source of violations against human rights defenders, actions by non-State actors that harm them and obstruct their work are increasing. There is growing urgency to apply the Declaration fully in the contexts of impunity, of State and non-State actors, and with regard to the Declaration's focus, in its article 18, on "safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes".

9. The Special Representative considers that a precondition for the achievement of any progress in the implementation of the Declaration or success in putting in place effective laws, policies or mechanisms for the protection of defenders is the good faith and firm commitment of States towards this end. The Special Representative is aware that some of the factors that she has already highlighted in her reports are rooted in situations such as armed conflict, religious and ethnic tensions, an increase in acts of terrorism and other difficult challenges for Governments. Nevertheless, these difficulties cannot be used as justifications for

non-compliance. Any attempt to do so would undermine the very spirit of the Declaration.

B. Types of violations

10. The Special Representative describes below some of the cases reported to her that illustrate the factors undermining the security of defenders and the implementation of the Declaration. The nature of the abuse that occurs, the prevalence of certain forms of violations, the actors involved and the State's response all illustrate the problems in the structures and systems of governance that allow abuses to occur and the lack of sufficient safeguards, means of prevention and redress.

1. Arbitrary arrest and detention

11. Arbitrary arrest, sometimes followed by the misuse of the law to detain, prosecute and imprison human rights defenders, is the single most common violation recorded by the Special Representative. She has received many reports of defenders being held in incommunicado detention and in poor conditions. Arrests are commonly carried out without warrants, with no charges ever formally pressed, legal representation and family visits sometimes denied and defenders subjected to beatings or even torture. An arrest, or even the threat of arrest, can effectively end whatever human rights activities a defender is engaged in and also divert the resources of the defenders' organization, and the rest of the human rights community, away from other human rights concerns.

12. In one common example, a human rights defender and election monitor noted what he considered to be serious violations of electoral procedures during a parliamentary election. When he reported the violations to a State election commission, he was arrested by police and accused of obstructing the election process. He was subsequently detained.

13. In another instance, several human rights defenders were reportedly arrested and detained by police two days after participating in a peaceful demonstration against human rights abuses and restrictions on democratic practices. The arrests were carried out without warrants and the defenders were allegedly punched and slapped on the head and kicked in their genitals by police officers. The defenders were interrogated without their lawyers, who in turn were not given access to information they needed to prepare an adequate legal defence for the subsequent trials of the defenders on charges of "anti-State" activities.

14. A journalist who had focused on human rights abuses in his work was arrested at the airport while on his way to attend a conference on freedom of the press. Several of the defenders who attended the 2004 session of the Commission on Human Rights as NGO representatives visited the Special Representative's office to report that, following their departure from their home countries, security officials had visited their homes or offices and questioned their families and colleagues about what the defenders were going to do at the Commission, leading the defenders to fear possible arrest upon their return.

2. Prosecution and pre-trial detention

15. Even where defenders are formally prosecuted or detained, multiple violations of human rights are frequently inherent in the process itself.

16. In June 2003, a journalist published a report on the allegedly poor working conditions in the mines in his country, leading to some deaths of miners. A week later he was convicted by a court of defamation and sentenced to five years' imprisonment. In another country a large number of human rights defenders and political activists were arrested and tried in closed courts a month later. The courts handed down sentences ranging from 6 to 28 years' imprisonment for alleged harm to the independence, dignity and sovereignty of the State.

17. In another instance, a human rights defender helped farmers' representatives write petitions to the national parliament and to the Government protesting State confiscation of land; he also helped to disseminate, via the Internet, information on the farmers' demonstrations and other protests. He was arrested and prosecuted in a trial that was closed to the public and sentenced to 12 years' imprisonment.

3. Physical integrity of defenders

18. The violation of the physical integrity of defenders takes the form of killings, attempted killings, torture, beatings, death threats and disappearances.

19. The Special Representative received information indicating that a man who had allegedly witnessed people being killed by execution squads whose members included off-duty policemen presented his information personally to the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions when she visited his country. Four days later, two men on a motorcycle wearing masks rode up to him in a busy city street and shot him twice in the head, killing him.

20. Another human rights defender working as a volunteer collecting information on human rights abuses in a zone of internal armed conflict was beaten up at home by a large group of soldiers, who then took him away. Six days later the defender's body was found near a highway. His arms and legs were broken and his body had been punctured in numerous places by a sharp object. He had a bullet wound in the back of his head.

21. In another country, in December 2003, a representative of a farming trade union was shot dead. He was the fourth representative of the union to die in a 12-month period. A human rights defender and president of a trade union who had been working for improved working conditions in the garment industry of his country received several death threats, which were reported to the police. In January 2004, shortly after 9 a.m., he was shot and killed by two unidentified men in the city centre.

22. In March 2004, a human rights defender who had been investigating alleged torture of detainees by police left his home and has not been seen since. A government investigation led to the arrest of a number of police officers, who were later released. In January 2004, a woman human rights defender was pulled off the street by unidentified men and forced into a red van. She was driven around the city for some time, while the men poured boiling water on her feet and warned her to stop her activities on behalf of a women's rights organization. The chairman of a human rights organization that had distributed a country human rights report to

diplomatic embassies was accused in national newspapers of anti-State activities and on the same day, the defender was attacked by four men and severely beaten, leaving him in critical condition.

4. Harassment

23. Harassment is used as a means of silencing human rights defenders and deterring them from carrying out their activities. Methods of harassment include involving defenders in criminal prosecution or civil litigation, often for libel and defamation. These prosecutions have at times led to heavy sentences of imprisonment or fines. Other modes of harassment are verbal abuse and threats of harm to defenders, their families and lawyers, or witnesses. Intimidation and coercion have been used to pressure defenders to violate client confidentiality or to retract statements exposing human rights abuse. Some defenders have been harassed on their way to attend a human rights event or their identity papers were confiscated.

24. A human rights lawyer and president of an association dedicated to combating torture, returning to her country from international human rights events, was repeatedly stopped at the airport by customs officials, who read through her documents and confiscated some publications. A human rights NGO reporting on instances of torture and political violence and providing assistance to victims was included on a list published by the Government of organizations considered to be a threat to national peace and security. A few months later, allegations were printed in the State-controlled media accusing the organization of being involved in violent attacks.

25. Two human rights defenders heading different human rights NGOs that had reported alleged human rights violations by the authorities were subsequently referred to by a State official on a State-owned television channel as "enemies of the State". The official also gave out the home telephone number of one of the defenders. Within a few days the offices of both organizations were attacked by large groups of men. The firm providing security to one of the offices was advised by the Ministry of the Interior to withdraw its services, and the defenders' family members were accused of being unpatriotic by neighbours.

C. Factors responsible for violations

Human rights reporting at national or international levels

26. Human rights defenders are almost always targeted because of activities related to the gathering of information, or when they actually move to report human rights violations. Governments tend to react more aggressively when reports address politically sensitive issues, and they sometimes deliberately create a climate of sensitivity around a particular issue in order to silence criticism or dissent or to deter human rights defenders from taking up the subject. National security or ideology, religious belief or cultural specificity is frequently used to label defenders exposing violations as unpatriotic, anti-State or sacrilegious.

27. Defending human rights becomes more risky when there is a lack of transparency on the part of the Government and the right of access to information and the freedom of expression or assembly is either not protected or not respected.

Turning the law against human rights defenders

28. While defenders are often harmed by totally arbitrary actions, in many instances the law and legal processes are misused to harass or punish defenders for their human rights activities, complicating the search for measures to protect them. Defenders have been prosecuted for undertaking activities that are well within the scope of human rights monitoring and advocacy legally protected by the Declaration. Prosecutions are pursued using domestic laws that either directly contravene the principles of the Declaration and other international human rights instruments or contain provisions that can be interpreted, for political or other reasons, in such a way that in practice contravenes these international standards. Legislation on security, public order, defamation and libel has been widely used in this respect.

Independence of the judiciary

29. A vigilant, independent and competent judiciary is an effective check on the abuse of law and provides security for human rights activity against the effects of oppressive laws and practices. However, violations occur within the legal process itself because of the lack of adequate judicial scrutiny and the failure of judges to recognize human rights activity and reject attempts to restrict it. Many of the violations brought to the attention of the Special Representative would not have been possible without an unacceptable level of tolerance by the judiciary of illegal procedures targeting human rights defenders.

The responsibility of local authorities

30. Local authorities often fail to realize that the principle of "State responsibility" with respect to human rights extends to all tiers of government and is therefore binding upon local authorities as well. While several countries have human rights mechanisms and other institutional arrangements at the national level, only a few have any effective operational human rights protection systems at the local level, leading to much reduced oversight of the exercise of authority. As a vast majority of human rights defenders are engaged in activities in the local context, safeguards for their protection must be fully operational at the local level as well.

The role of the media

31. Government officials, sometimes at the highest level, have used the State-controlled media in a manner that has made defenders vulnerable to attack by other political or social forces, for instance, political parties, religious fanatics or vigilantes, or has caused social isolation of defenders by frightening people away from associating with them. This becomes more probable in the absence of independent media sensitive to human rights that can counter the effects on defenders of government propaganda. In some situations, social actors or corporate entities have also used the media to undermine human rights and malign human rights defenders. The role of the media in protecting or endangering human rights defenders cannot, therefore, be underestimated.

Government response to human rights concerns

32. Activities for the promotion and protection of economic, social and cultural rights are increasingly challenging development paradigms, economic policies and

decisions on the distribution and utilization of natural resources. It is becoming increasingly difficult for Governments to respond to popular demands in this area because international, more than internal factors, are determining the direction of policies. The inability or unwillingness of Governments to accommodate popular demands has resulted in repression. If there existed processes through which broad human rights concerns affecting society could be effectively raised, the risk to the human rights defenders who raised them would be much reduced.

Absence of popular support for human rights issues

33. Popular support for the activities of defenders has, in many situations, provided them with a barrier against State repression. In contrast, raising human rights concerns that are not popular among the majority — such as the rights of religious or ethnic minorities, migrants and, in some social contexts, women — places human rights defenders at greater risk. In these situations the role of the State in creating an enabling environment for defenders to work and providing protection where needed becomes even more important.

Weakness of civil society

34. It cannot realistically be expected that protection systems at the national level will function effectively without an aware, strong and active civil society. The credibility of NGOs, particularly those working in the field of human rights, contributes to the strength of civil society and improves the prospects of influencing State conduct. Transparency in their operations, relevance to people's rights and freedoms of the issues raised and, more importantly, linkages with a rights-based movement have helped NGOs to gain credibility.

D. Core problems: the actions of authorities

State policy or individual action?

35. In a vast majority of cases violations could not have occurred without the participation or complicity of State officials. In some instances State policies are directly responsible for the manner in which officials react to activities carried out by human rights defenders. In others, the decision to target defenders is taken by individuals, or is a local policy rather than a national and institutional response.

The absence of oversight or safeguards

36. In all cases, however, the lack of oversight by superior officials, monitoring bodies, the judiciary and prosecutors is glaringly apparent, as individuals and mechanisms fail to comply with the law and with procedures. The failure of police to record arrests and the absence of judicial scrutiny of the charges or grounds for arrest before issuing arrest warrants or making remand orders are examples of aberrations that make arbitrary arrest, improper detention or torture possible. The situation is worse where the military exercises functions normally in the purview of the police. Security considerations often allow military forces to operate in secrecy in their operations and exempt them from respecting normal safeguards. The military often has no human rights training and seldom interacts with human rights defenders.

Impunity

37. Regardless of whether the threat emanates from State authorities or non-State actors, complaints by defenders are ignored or not properly investigated. The Special Representative has received multiple complaints of defenders having reported incidents that remained uninvestigated and that led to subsequent attacks and more serious harm.

E. Actors responsible for violations

38. Where acts against defenders related to their human rights activity are repeated over a period of time and in several parts of the country it is likely that the acts themselves form part of a policy for which the national political authorities must bear responsibility.

39. The Special Representative has noted a very distinct pattern of regular and systematic abuse of power by State officials operating under the authority of the Ministries of the Interior, Justice and Defence. More specifically, the key State actors responsible for committing or failing to address violations against defenders are: the police, military and other security forces; prosecutors; judicial officers; revenue officials; and authorities responsible for the registration of NGOs. Policy initiatives or practical measures for the implementation of the Declaration and for creating and strengthening protection systems for defenders must, therefore, begin with these agencies.

F. Actions that could overcome the problems identified

The status of human rights defender

40. Greater recognition of the status and role of human rights defenders could provide a basis for their protection and for the implementation of the Declaration. Recent initiatives at the national and international levels show ways in which the protection of defenders can be formalized, such as the declaration adopted by the Federal Parliament of Germany on human rights defenders and the guidelines on human rights defenders adopted by the European Union in 2004.

Dissemination and training on the Declaration

41. Wider knowledge and better understanding of the Declaration would enable relevant institutions, agencies and authorities to apply norms or provisions specific to defenders more easily. Awareness of and directives for the observance of the principles relating to the activities and protection of defenders must reach all authorities and State officials at the local level. Greater familiarity on the part of judges, in particular with the types of activity protected by the Declaration, could help them to quickly identify human rights defenders, exercise greater scrutiny to ensure that human rights activity is not the reason for prosecuting defenders and to apply the Declaration when appropriate. Enhancing the sensitivity and capacity of judges in this regard would contribute to reducing the impunity of State and non-State actors who violate the rights of defenders. Training for subordinate and local judiciaries and encouraging appropriate forms of interaction between them and

human rights defenders have been suggested to the Special Representative as a means of fostering such sensitivity within the judiciary.

Strengthening national legislation and its application

42. Ensuring that domestic legislation is compatible with international human rights law and that it is properly enforced would enhance implementation of the Declaration and protect defenders against many of the acts to which they are vulnerable. Laws guaranteeing freedom of information and expression provide defenders with a strong legal basis for their human rights monitoring.

Public participation mechanisms

43. Some national constitutions provide for greater direct participation of citizens in the design of public policy, for example, through the requirement that public hearings be held before major projects affecting a locality or class of people are approved. Formalizing the role of human rights defenders in such procedures in countries where they exist could enhance recognition of their work and lead to a more secure environment for their activities, in particular with regard to the promotion and protection of economic, social and cultural rights.

State oversight and coordination mechanisms

44. Better coordination between interministerial human rights bodies, oversight by parliamentary committees or by national human rights commissions or other similar mechanisms and clearly stated mandates for the protection of human rights defenders could make these State bodies more credible and of more practical use. Parliamentary committees for human rights could make bipartisan efforts to protect human rights by holding hearings where human rights defenders could bring up issues of concern and bring human rights violations to the attention of the committees. The establishment of transparent and publicly accountable mechanisms to investigate and address complaints against the police and the military, and the access of human rights defenders to such mechanisms, has brought about improvements. Above all, these mechanisms must be required to respond to public concern by, at the very minimum, explaining State actions or omissions.

The international community, including the United Nations

45. Much greater vigilance and strict action in response to Governments that carry out reprisals against those reporting on human rights violations in their countries, including to international bodies, is the most basic responsibility of the international community towards human rights defenders. The Commission on Human Rights and the General Assembly must take note of several such incidents reported by the human rights special procedures mandate-holders in the past year.

III. Meeting the standards of the right to association contained in the Declaration

46. Freedom of association involves the right of individuals to interact and organize among themselves to collectively express, promote, pursue and defend common interests. Articles 22 of the International Covenant on Civil and Political

Rights, 8 of the International Covenant on Economic Social and Cultural Rights, 11 of the European Convention on Human Rights, 10 of the African Charter on Human and Peoples' Rights and 5 of the Declaration on human rights defenders all guarantee this right.

47. Freedom of association is at the heart of an active civil society and a functioning democracy. In her 2004 report to the Commission on Human Rights (E/CN.4/2004/Add.1), the Special Representative reported on communications sent with regard to some 566 defenders, 442 of whom were members of NGOs, trade unions, or professional associations. During the first four years of her mandate, the Special Representative sent an increasing number of communications regarding alleged violations of defenders' right to freedom of association, with 40 cases sent in 2003 on this subject alone

48. While in most countries, the right to freedom of association is constitutionally guaranteed, information received by the Special Representative indicates a notable increase in the number and the range of infringements of the exercise of this right, resulting in serious obstacles to the work of human rights defenders. Within the last 10 years, many countries have adopted or drafted new national legislation to regulate the creation and operation of NGOs and other associations. In a majority of countries, these new laws were adopted after 2001 and stricter rules were legitimized by counter-terrorism and security considerations. In practice, they have limited defenders' freedom of association and increased the regulatory powers of the State. In many cases, these new laws have provided the State with the means to crack down on anyone critical of governmental action. In a few cases, they have been used by Governments to put an end to human rights activities through legal action. As of August 2004, the Special Representative had sent communications to seven countries (Belarus, Egypt, Georgia, Turkmenistan, the United Republic of Tanzania, Uzbekistan and Zimbabwe) where the legislation in place raises particular concern for the work of human rights defenders.

49. The Special Representative must vigorously insist that any organization has the right to defend human rights; that it is the vocation of human rights defenders to examine government action critically; and that criticism of government action, and the freedom to express these criticisms, is an essential component of a democracy and must be legitimized in law and practice. States may not adopt laws or practices that would make activities for the defence of human rights unlawful. Article 22, paragraph 2, of the International Covenant on Civil and Political Rights stipulates that "no restrictions may be placed on the exercise of the right [to freedom of association] other than those which are prescribed by law and which are necessary in a democratic society in the interest of national security or public safety, public order, the protection of the public health or morals or the protection of the rights and freedoms of others". The Special Representative considers that this provision, read together with article 5 of the Declaration on human rights defenders, must be understood to include the protection of freedom of association for human rights organizations whose work may offend the Government, including organizations that criticize policies, publicize human rights violations perpetrated by authorities, or question the existing legal and constitutional framework.

50. The Special Representative uses the terms "NGO law" or "association law" broadly to refer to laws, decisions, decrees and other measures of a legally binding character that purport to regulate the creation, operation and dissolution of groups

that express, promote, pursue and defend common interests. Typically, these measures are contained in domestic legislative instruments bearing such titles as "Law on Associations", "Law on Public Societies", "Law on Public Associations", "NGO Law", etc. In this report, the Special Representative focuses in particular on the laws and the situation of NGOs and associations; less emphasis is put on regulations concerning trade unions and professional associations.

A. Difficulties in the creation and registration of human rights associations

Criminalization of non-registered groups

51. In the most liberal regulations, present in many European Union countries, often referred to as a regime of "declaration" or "notification", NGOs are automatically granted legal personality upon receipt by the authorities of notification by the founders that an organization was created. Typically, such notification includes basic facts such as the name, aims and address of the organization and the details of its founders. In contrast, a common feature of many laws that restrict freedom of associations is the criminalization of non-registered entities and the requirement to obtain authorizations or registration before carrying out human rights activities. In recent years, many countries have introduced registration requirements where none formerly existed and have used the new legislation to outlaw organizations that had existed for many years. Under laws in certain countries, failure to register an organization carries a penalty of up to a year at corrective labour. State authorities have used registration procedures to filter and reject organizations critical of the Government, with human rights organizations suffering in particular from this practice.

Burdensome and lengthy registration procedures

52. Defenders have reported a general lack of clarity concerning the steps to be taken for registration and a lack of access to adequate information at the local level to complete the process. Consequently, defenders have submitted "incomplete" files, generating delays in their processing. In one case, the leader of an organization reported having to go back to the Ministry of Justice every week for months in order for his organization to be registered. Defenders have also reported receiving contradictory and ever-changing instructions from different State organs on how to register. Some organizations that considered themselves registered were later informed that they had not fulfilled the necessary requirements. Defenders have also had their applications rejected on the basis of incomplete applications, with such trivial justifications as "no street address provided" and other minor administrative issues.

53. While association laws generally require basic information about an organization — such as copies of the organization's statutes and the founders' names and contacts — in a number of States, authorities have interpreted "basic information" in an overly broad sense and used this requirement as an opportunity to gather information for intelligence purposes or as a means to perpetually delay the registration of NGOs. For instance, in one country the founders of NGOs are required to provide copies of their passports and employment history records.

54. Other burdensome requirements have included a large number of founders: while many laws require a newly created group to have a minimum of two to five founders, others require 10 or more. Such requirements, coupled with repressive environments, have proven to deter individuals from forming human rights organizations.

55. While in many countries applying for registration is virtually free, in others, registration fees become a real barrier to the creation of organizations. In one instance, registration fees amount to $500, a sum corresponding to several months' salary in this particular country. For locally funded human rights defenders exorbitant fees make registration of their organizations almost impossible.

Limits on the creation of networks and independence

56. Information received by the Special Representative shows that in many places existing legal entities, including human rights organizations, are limited and sometimes prohibited from forming groups and establishing networks, coalitions or federations. For example, the law of one country authorizes only one federation on a given issue to operate within a region; the same law provides for the creation of a single federation at the national level comprising all specialized and regional federations, under the control of the Government.

Ill-defined grounds for denial of registration and failure to communicate the reasons

57. Criteria for registration included in national laws, where they exist, are frequently ambiguous enough to allow authorities broad discretion in their interpretation, resulting in arbitrary denial of registration for human rights organizations. In one country, registration can be denied based on an assessment that an NGO's activities do not strive towards the "public interest", without defining what that means. In other countries, authorities are granted wide powers to decide whether a new NGO is needed in a given field and can require organizations to change their objectives. In yet another country, registration can be denied if the applying organization is deemed to be "undesirable" by the registration authorities, once again not providing a definition of this notion. Cases submitted to the Special Representative cite a significant number of defenders being denied registration on the grounds that the nature of their proposed activities was either illegal or undesirable.

58. Increasingly, State authorities fail to respond to registration applications from human rights defenders. In some cases, human rights organizations have waited for a response for months, or even years, despite having filed for registration several times. In other cases, authorities have refused to issue the receipt for the publication of the public notice required for an NGO to come into existence. In one instance, defenders were physically prevented by the police from entering the public government office where applications are filed. Increasingly, when a negative response to a registration request is received, defenders are not told of the grounds for the refusal.

Appeal process

59. In the absence of a response or of a motivated decision, it has been difficult for human rights defenders to lodge appeals against the rejection of their registration

application. Even where responses are received, defenders have faced difficulties in exercising their right to appeal because of the complexity of the process, the time-consuming procedures and the lack of independence from the Government of the reviewing bodies.

Registration authorities

60. It is crucial for the reviewing body to be independent from the Government to ensure the fairness of the registration process. Information received by the Special Representative indicates that registration is becoming increasingly politicized by Governments, to the detriment of human rights defenders. In a large number of cases, registration applications are reviewed by government ministries, and even security units with strong ties to Government. Numerous new laws establish registration boards whose members are appointed at the discretion of the Government. In one State, the Minister of Public Service, Labour and Social Welfare has the power to select the registration board's chairman, who hears and determines appeals against the board's decisions and appoints officers to inspect NGO affairs.

Re-registration

61. Many States, after passing new laws, have required existing human rights organizations to re-register under the new regime and have used this requirement to control NGOs critical of government policies. The Special Representative has been informed that this has resulted in many already registered organizations having their legal status revoked. Defenders are also frequently obliged to re-register their organization following minor changes to their statute, management, or membership, which results in unreasonably time-consuming procedures and diverts human and financial resources away from human rights work. While changes fundamental to the existence of the NGO may call for re-registration, the Special Representative considers that minor changes such as changes in address, membership, management, rules of procedure, etc. that do not alter the nature of an organization could more reasonably be regulated through mere notification.

B. Restrictions on the registration of international NGOs

62. While only a minority of countries deny foreign human right defenders the right to associate freely, in many, they are subjected to a separate and more restrictive regime. In particular, some States require that at least 50 per cent of founding members be nationals. Others require that international NGOs obtain prior authorization before being allowed to operate in a country. Authorization is often dependent on a favourable opinion from the Foreign Ministry. In other cases, international NGOs based in a country are subject to additional application requirements, for example a larger minimum number of members, or the obligation to have a branch abroad in order to be eligible for registration in the category of "international association". International human rights groups have reported that these discriminatory regimes have delayed and sometimes prevented their registration and operation in a number of countries.

C. State scrutiny of the management and activities of NGOs

State scrutiny of the management of organizations

63. Where State authorities are given the right to monitor and interfere in the management of NGOs, defenders have seen their independence and work threatened. In one State, the law grants the authorities the right to monitor the election of an organization's board members, to object to certain candidates and to request that an internal decision be withdrawn when it is deemed to be in conflict with national regulations. In another country, the law effectively allows authorities to determine the wages of human rights NGO workers, to suspend the management board of an organization and to replace its members; in 1995, under this law State authorities suspended all the executive members of a women's rights NGO on unsubstantiated grounds of misadministration and misappropriation of funds and replaced the trustees with persons with links to the Government.

State scrutiny of the objectives of organizations

64. A key problem for defenders with the application of NGO laws is the use of vague, imprecise, and at times overly broad definitions of legitimate grounds for restricting freedom of association, which allows for varying interpretations based far more on government policy than on strictly legal considerations.

65. In many States, "reasonable" restrictions have been used to limit the freedom of association of defenders, to deny registration to human rights organizations or to justify their closure. In several countries, the law enables authorities to ban organizations that show signs of "extremism" in their activities, plans or statements. In others, activities that "threaten national unity", "violate public or moral codes", or are "political" are prohibited. In yet another State, associations can be disbanded for activities "endangering the integrity and security of the State, engaging in propaganda for war, or racial, national and religious hatred, or if they threaten the physical and psychological well-being of citizens". Interpretations of whether an organization falls into one of these vague categories is left to the authorities, which have increasingly included any organizations critical of the Government, paving the way for the criminalization of human rights activities.

66. In particular, NGOs that publicize human rights abuses by authorities have been accused of undermining the "integrity of the State" or "tarnishing the image of the State". In one case, an NGO working on minority rights was accused of threatening the integrity of the State for having used a minority language on a poster. In another case, an NGO working on gay and lesbian rights was denied registration because its aims were deemed unethical and "immoral". The Special Representative is particularly concerned about the practice by a number of States of systematically categorizing organizations working for minority rights or advocating for democratic rights and constitutional or legislative reform as unlawful and, in certain cases, even as terrorist organizations. She notes with concern that a number of States perceive civil society in general and human rights organizations in particular as groups whose only objective should be to help the Government achieve its goals.

State scrutiny of NGO activities

67. In many countries, NGO laws impose restrictions on the types of activities in which human rights organizations can engage. In particular, certain laws establish a restrictive list of authorized activities while others prohibit NGOs from engaging in any "political" or "trade union" activities, without defining either term. Such language puts human rights NGOs working to provide legal aid, advocating for the reform of the judicial system, working on election monitoring or defending the rights of political prisoners at risk of having their activities labelled illegal. In one case, the law tasks the registration body with "providing policy guidelines to NGOs for harmonizing their activities in light of the national development plan". In a later article, the same law grants this body the right to "investigate and inquire into any matter" to ensure that NGOs adhere to their own statute. States have used these provisions against human rights organizations to circumscribe their activities to fit within the policies of the State and adopted laws that see human rights organizations as mere implementing partners of government policies.

68. The operations of human rights NGOs have also greatly suffered from burdensome legal requirements to constantly inform authorities about their activities. Requirements that associations submit to the Government annual reports, copies of management decisions and prior notification of any events they organize have been used to interfere in the running of the human rights programmes.

69. The Special Representative has received an increasing number of allegations of interference by State agents, most frequently the security and police forces, in NGO activities. Human rights organizations have been prevented from holding seminars, conferences and workshops related to human rights issues. In some instances, interferences in human rights activities have included attempts to prevent NGOs from releasing reports on human rights abuses by seizing books and publications. In 2003, a collective of mothers was prevented from holding a conference on the death penalty on the grounds that their association was not registered. In 2003, the martial law authorities of one country broke into a training workshop and attempted to take the names of all the participants. In another instance, the police arrived at a workshop on voting and election rights, asked all participants to leave and forced the foreign election training team onto a plane.

70. Human rights organizations have also faced invasive policing. The Special Representative sent communications concerning 22 cases of raids by law enforcement agencies against human rights organizations. Illegal raids have provided opportunities for authorities to seize documents, files and databases relating to human rights abuses, members of the organization, witness testimony and cases being investigated. Law enforcement forces have also confiscated equipment, including computers and cameras. Such police operations are often conducted without warrants and, in some countries, occur repeatedly. They constitute serious interference in the work of human rights organizations. The seizing of confidential data, in particular testimonies of victims or witnesses and lists of names, represents a serious threat to the operation and credibility of human rights NGOs and can result in the named persons being targeted. In one instance, during a police raid evidence was planted to incriminate human rights defenders. In another case, police forces besieged an NGO to prevent it from holding a solidarity meeting with an imprisoned defender. Additionally, human rights defenders have faced surveillance and tapping

of their office telephones by State authorities, in particular security forces and the police.

D. Administrative and judicial harassment: grounds and procedures for dissolution

71. Another crucial area for human rights defenders concerning the application of NGO laws is the misuse of provisions regarding the suspension and dissolution of organizations. In a number of countries, the law grants the Ministry of Security, or its equivalent, the right to issue warnings to organizations. In one country, after two warnings have been sent, the Ministry can take an organization to court and in some cases even order its closure. Authorities in particular ministries have abused their power to issue warnings as a means of intimidating and threatening human rights NGOs. A significant number of NGOs have been sued or shut down under this procedure. In one particular country, the Ministry of Justice has systematically brought court cases against human rights groups for minor administrative irregularities such as having a different address from that officially registered, failure to use proper letterheads, using a symbol different from the one registered, changes in their board, etc. The Special Representative has taken up at least 15 cases of human rights NGOs facing legal proceedings for such irregularities and for holding meetings and publishing human rights reports. In one case, an NGO was charged with publishing seditious news because it reported that 50 miners had been buried alive by the police.

72. In some cases, governmental bodies such as ministries and territorial administrations have the authority to suspend the activities of NGOs without prior judicial review. In one case, the law provides the territorial administration with the power to suspend for a period of up to three months the activities of any association on the grounds of "disturbance to public order", and the minister with the authority to dissolve any association which departs from its original objective or whose activities seriously undermine public order or the security of the State. While their decision may be challenged before an administrative court, the provisions give State authorities discretionary power to end the operations of NGOs. In one case, security forces forcibly shut down a women's rights network, without legal justification.

73. A number of laws allow registration authorities to de-register NGOs if an organization is deemed to have altered its objective or to be pursuing objectives other than those declared. In one case, an organization defending the advancement and rights of women was de-registered because "the particulars in the application for registration of the society were false". The organization had produced a document that outlined the prominent women's issues and questioned whether these concerns were reflected in the platforms of general election candidates.

74. The Special Representative notes that such legal proceedings, even when they do not result in the actual closure of human rights organizations, put serious strain on human rights defenders' time and the organization's financial and human resources. In one country, two main human rights NGOs have had to face several hundred trials in connection with their publications on the grounds that they threatened the territorial integrity. Some proceedings have resulted in NGOs having to pay heavy fines, others in acquittals.

E. Restrictions on funding

75. A common feature of many newly adopted NGO laws of concern to human rights defenders is restrictive provisions regarding funding. An increasing number of domestic laws place restrictions on the origin of the funds that NGO receive and require prior authorization for NGOs to access international funds from nationals abroad or from foreign donors.

76. The bank accounts of human rights NGOs have been blocked and their assets frozen to prevent them from accessing international funding. In one case, the Ministry of the Interior prohibited a human rights organization from accessing the second half of a European Commission grant intended to fund its activities. As a result, the NGO has not been able to pay its office rent and is threatened with eviction. In another case, a human rights NGO had received a $40,000 grant from an international donor to run a one-year human rights monitoring project and produce an annual report, but it was unable to start its activities because it lacked the authorization to receive the grant despite having applied to the Ministry of Social Affairs well in advance, as required under the law. Restrictions have also been placed on how human rights defenders can utilize international funding. A presidential decree in one country prevents NGOs from using international aid to organize "meetings, demonstrations or picket lines", or to "draft and circulate propaganda documents or to engage in other types of political activities".

77. Given the limited resources available for human rights organizations at the local level, legal requirements of prior authorization for international funding have seriously affected the ability of human rights defenders to carry out their activities. In some cases, they have seriously endangered the very existence of human rights organizations. The ability of human rights defenders to carry out their activities rests on their ability to receive funds and utilize them without undue restriction, in conformity with article 13 of the Declaration.

78. Whereas in many countries associations and not-for-profit organizations are tax exempt, a few States have resorted to tax pressure to discourage human rights defenders from receiving funds from abroad. In one State, the tax law was amended in 2002 to include a provision which sets a 25 per cent tax on all resources that human rights NGOs receive. The provision is clearly discriminatory against human rights organizations as it does not apply to charities dealing with art or scientific research. Human rights organizations have been unable to conform to this new provision and are at risk of being prosecuted for breach of the law.

F. Restrictions on and retaliation for cooperation with international human rights partners and NGOs

79. Human rights defenders have been targeted for cooperating with international human rights NGOs. In one State, the authorities have the power to prohibit a national NGO from associating itself with an international organization, but are not required to provide grounds for their decision. The same law allows registration authorities to refuse to allow national organizations to become members of groups outside the country, without specifying the basis for such a restriction.

G. Good practices and recommendations in conformity with the Declaration

80. **While many laws regulating NGOs have proved to be problematic for human rights defenders, others provide examples of good practices. In this part of the report, the Special Representative builds on existing good practices to make recommendations on legislative provisions that are in conformity with existing international human rights standards, including the Declaration on human rights defenders.**

81. **NGO laws should be written and implemented to allow for the quick, easy and inexpensive creation of organizations and the acquisition of legal personality. Individuals and legal entities, national or foreign, and even organs of the State should be allowed to establish and independently operate associations for the defence of human rights, in accordance with clearly stated rights, privileges and immunities.**

82. **The Special Representative makes the following recommendations:**

With regard to registration:

(a) **The right to register and the duty to register. NGOs have a right to register as legal entities and to be entitled to the relevant benefits. Nevertheless, the Special Representative also believes that registration should not be compulsory. NGOs should be allowed to exist and carry out collective activities without having to register if they so wish;**

(b) **Favouring regimes of declaration instead of registration. Whereas the Special Representative recognizes that States can regulate freedom of association, she encourages them to adopt regimes of "declaration" or "notification" whereby an organization is considered a legal entity as soon as it has notified its existence to the relevant administration by providing basic information, including the names and addresses of the founder(s) and the name, address, statutes and purpose of the organization;**

(c) **Expeditious process. Where a registration system is in place, the Special Representative emphasizes that it should allow for quick registration. The law must set short maximum time limits for State authorities to respond to registration applications; failure to provide a response should result in the NGO being considered as legally operative;**

(d) **Explained decision. Decisions to deny registration must be fully explained and cannot be politically motivated. Failure to provide detailed grounds for the decision should result in the NGO being considered to be operating legally;**

(e) **Clear and publicly accessible criteria and procedures for registration. NGO laws must provide for clear and accessible information on the registration procedure. Official documents describing in detail the necessary steps and documentation for registration, including sample applications, must be accessible to NGOs and disseminated to all State organs. Training must be conducted or instruction given to ensure homogenous implementation of the law and to prevent arbitrary interpretations of registration criteria;**

(f) Documents required. NGO laws should preclude overly burdensome requests for unnecessary documents. Documentation required for registration should serve the sole objective of registration and must not be used for intelligence or other purposes;

(g) Presumption of legality. NGOs should be presumed to be operating legally until it is proven otherwise, in particular, during the entire registration process;

(h) Independence of registering bodies. Registering bodies should be independent from the Government and include representatives of civil society. In particular, members of such bodies should not be directly appointed by Government, nor at its discretion;

(i) Re-registration. In the event of the adoption of a new law all previously registered NGOs should be considered as continuing to operate legally and provided with accelerated procedures to update their registration;

(j) Appeals process. All NGOs whose applications have been denied by the registering body should have an opportunity to challenge this decision in an independent court;

(k) Foreign NGOs. Foreign NGOs carrying out activities for the promotion of human rights must be allowed to register and function without discrimination, subject only to those requirements strictly necessary to establish bona fide objectives;

(l) Funding. Governments must allow access by NGOs to foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as Governments. The only legitimate requirements of such NGOs should be those in the interest of transparency;

With regard to the objectives and activities of human rights NGOs:

(m) Governmental authorities should refrain from exerting a priori scrutiny into the objectives of NGOs. The legality of an organization's purposes and its conformity with the law should be reviewed only when a complaint has been lodged against the organization. Only an independent judicial body should be given the authority to review an organization's purposes and determine whether they are in breach of existing laws;

(n) No restrictions should be imposed on the types of activities that human rights defenders carry out in the defence of human rights, provided they respect the principle of transparency and non-violence. Legitimate aims must include the right to engage in the defence of human rights standards, including but not restricted to furthering democratic rights, advocating for constitutional reforms, publicizing opinions and facts critical of government policies and actions and advocating for State accountability;

(o) Any restriction on the ground of "public order/morals/ethics" and any criteria meant to limit the right to freely associate must be clearly defined. Any human rights-related activities must be clearly excluded from these restrictions;

(p) States should be legally barred from interfering with the management structure and activities of NGOs. In particular, the Special

Representative encourages States to repeal legal provisions allowing for any control by the State of activities carried out in defence of human rights. Where concern arises with the activities of an organization, such concern must be brought before a fair, impartial and independent judicial authority through proceedings that are transparent, conducted in accordance with the principles of due process and open to public and international scrutiny;

(q) States should commit themselves to training their authorities, in particular the police and security forces, on how to implement the law at the local level in order to ensure that the freedom of association of human rights defenders is understood, respected and protected;

With regard to the suspension and closure of NGOs:

(r) Suspension. Government authorities should not be granted the power to arbitrarily suspend the activities of human rights groups. The courts alone should be entitled to order a suspension, and only in situations of clear and imminent danger that could result directly from such activities, and that is objectively ascertained;

(s) Dissolution. Actions by the Government against NGOs must be proportionate and subject to appeal and judicial review. Administrative irregularities or non-essential changes in the specifics of an organization should never be considered as sufficient grounds for closing down an organization;

With regard to funding:

(t) Access to funds, including from foreign sources, for the purpose of defending human rights should be ensured and facilitated by the law.